TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 743.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LEAVENWORTH, PLAINTIFF IN ERROR,

vs.

RALPH SELLEW.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED AUGUST 28, 1878.

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1 UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

In the Circuit Court of the United States of America in and for the District of Kansas.

RALPH SELLEW, PLAINTIFF, }
1388. *vs.* }
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, Defendant. }

Be it remembered, that on this day, to wit, October 11th, 1875, the plaintiff, by his attorneys, filed in the clerk's office of said court his petition, precipe, and security for costs in said entitled action, which said petition, precipe, and security for costs are in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

RALPH SELLEW, PLAINTIFF, }
vs. } Petition.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, Defendant. }

The plaintiff, Ralph Sellew, alleges that he is a resident and citizen of the State of Missouri, and that the defendant is a citizen of the State of Kansas.

1st. The plaintiff complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its bond of that date, numbered 55, whereby the said county of Leavenworth promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand
2 dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, which interest was represented by coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are hereto attached, marked "B," and made a part hereof, and that there is due from the said defendant to this plaintiff on said coupons the sum of

1 UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

In the Circuit Court of the United States of America in and for the District of Kansas.

RALPH SELLEW, PLAINTIFF, }
1388. *vs.* }
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, Defendant. }

Be it remembered, that on this day, to wit, October 11th, 1875, the plaintiff, by his attorneys, filed in the clerk's office of said court his petition, precipe, and security for costs in said entitled action, which said petition, precipe, and security for costs are in the words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

RALPH SELLEW, PLAINTIFF, }
vs. } Petition.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, Defendant. }

The plaintiff, Ralph Sellew, alleges that he is a resident and citizen of the State of Missouri, and that the defendant is a citizen of the State of Kansas.

1st. The plaintiff complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its bond of that date, numbered 55, whereby the said county of Leavenworth promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand
2 dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, which interest was represented by coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are hereto attached, marked "B," and made a part hereof, and that there is due from the said defendant to this plaintiff on said coupons the sum of

$75\frac{30}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

Plaintiff further says that he became the purchaser and owner of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1,134\frac{44}{100}$, with interest thereon from the 1st day of July, A. D. 1875.

2d. The plaintiff further complains of the said defendant and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 22, whereby the said Leavenworth county promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached (except the numbers) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons origi-
3 nally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "C," and made a part hereof, and that there is due from said defendant to this plaintiff on said coupons the sum *of* $\$75\frac{30}{100}$, with interest thereon at the rate of seven per cent. per ann. from the 1st day of July, A. D. 1875.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1,134\frac{44}{100}$, with interest thereon from the first day of July, A. D. 1875.

3d. Plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 79, whereby the said county of Leavenworth promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, which interest was represented by coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached (except the numbers) is herewith filed, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are hereto attached, marked "D," and made a part hereof, and that there is due from the said defendant to this plaintiff on said coupons the sum of $\$114\frac{78}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

Plaintiff further says that he became the purchaser and owner of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1,173\frac{92}{100}$, with interest thereon from the 1st day of July, A. D. 1875.

4th. The plaintiff further complains of the said defendant and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 37, whereby the said Leavenworth county promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached (except the numbers) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto and made a part hereof, marked "E," and that there is due from said defendant to this plaintiff on said coupons the sum of $\$114\frac{78}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

The plaintiff further says that he became the purchaser and owner of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1,173\frac{92}{100}$, with interest thereon from the 1st day of July, A. D. 1875.

5th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the first day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 43, whereby the said Leavenworth county

promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto (except the numbers) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "F," and made a part of this petition, and that there is due from said defendant to this plaintiff on said coupons the sum of $114.78, with interest thereon at the rate of seven per cent. per annum from the 1st day of July A. D. 1875.

The plaintiff further says that he became the purchaser and owner of the bonds and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,173\frac{92}{100}$, with interest thereon from the 1st day of July, A. D. 1875.

6 6th. The plaintiff further complains of the said defendant and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 46, whereby the said Leavenworth county promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1865, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached (except the numbers) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "G," and made a part hereof, and that there is due from said defendant to this plaintiff on said coupons the sum of $114\frac{78}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

The plaintiff further says that he became the purchaser and owner of *of* the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,173\frac{92}{100}$, with interest thereon from the first day of July, A. D. 1875.

7th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond
7 of that date, numbered 74, whereby the said Leavenworth county promised to pay the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto (except the numbers) is hereto attached, marked "A," and made a part hereof.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "H," and made a part hereof, and that there is due from said defendant to this plaintiff, on said coupons, the sum of $\$114\frac{78}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond *and* coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1,173\frac{92}{100}$, with interest thereon from the 1st day of July, A. D. 1875.

8th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1875, the defendant, the county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 84, whereby the said Leavenworth county promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, 1875, the sum of one thous-
8 and dollars, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto is hereto attached (except the numbers), marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time been, as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "I," and made a part of this petition, and that there is due from said defendant to this plaintiff on said coupons the sum of $\$114\frac{78}{100}$, with inter-

est thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1{,}173\frac{92}{100}$, with interest thereon from the 1st day of July, A. D. 1875.

9th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 33, whereby the said Leavenworth county promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which said bond and the unpaid coupons attached thereto (except the numbers) is
9 hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "J," and made a part of this petition, and that there is due from said defendant to this plaintiff on said coupons the sum of $\$37\frac{04}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1{,}096\frac{18}{100}$, with interest thereon from the 1st day of July, 1875.

10th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the said defendant, the county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 39, whereby the said county of Leavenworth promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which said bond and the unpaid coupons attached (except the numbers) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "K," and made a part hereof, and that there is due from said defendant to this plaintiff on said coupons the sum of $\$75_{\frac{30}{100}}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1,134_{\frac{44}{100}}$, with interest thereon from the 1st day of July, A. D. 1875.

11th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 20, whereby the said county of Leavenworth promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto (except the numbers) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "L," and made a part hereof, and that there is due from said defendant to this plaintiff on said coupons the sum of $\$75_{\frac{30}{100}}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

The plaintiff further says that he became the purchaser and owner of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1,134_{\frac{44}{100}}$, with interest thereon from the 1st day of July, A. D. 1875.

12th. The plaintiff further complains of the said defendant and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 25, whereby the said Leavenworth county promised

to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto (except the numbers) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "M," and made a part of this petition, and that there is due from said defendant to this plaintiff on said coupons the sum of $\$75\frac{30}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, 1875.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and
12 coupons, and that there is due on said bond and coupons from said defendant to this plaintiff the sum of $\$1,134\frac{44}{100}$, with interest from the 1st day of July, A. D. 1875.

13th. The plaintiff further complains of the said defendant and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the said defendant, the county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 1, whereby the said Leavenworth county promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, 1875, the sum of one thousand dollars, together with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto (except the numbers) is hereto attached, marked "A," and made a part hereof.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are hereto attached, marked "N," and made part hereof, and that there is due from said defendant to this plaintiff on said coupons, the sum of $\$37\frac{04}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, 1875.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1,096\frac{18}{100}$, with interest thereon from the 1st day of July, 1875.

14th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth,
13 and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 10, whereby the said Leavenworth county promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto (except the numbers) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "O," and made part hereof, and that there is due from said defendant to this plaintiff on said coupons the sum of $\$37\frac{04}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1,096\frac{18}{100}$, with interest thereon from the 1st day of July, 1875.

15th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 32, whereby the said county of Leavenworth promised to pay to the Leavenworth and Missouri Pacific Railroad
14 Company, or bearer, on the 1st day of July, 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto (except the numbers) is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are hereto attached, marked "P," and made a part of this petition, and that there is due from said defendant to this plaintiff on said coupons the sum of

$37\frac{04}{100}$, with interest thereon at the rate of seven per cent. per annum from the first day of July, 1875.

The plaintiff further says that he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due from said defendant to this plaintiff thereon the sum of $\$1{,}096\frac{18}{100}$, with interest thereon from the 1st day of July, 1875.

16th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the said Leavenworth county, by its duly authorized agents, made and executed its certain other bond of that date, numbered 63, whereby the said Leavenworth county promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, on the 1st day of July, A. D. 1875, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are attached hereto, marked "R," and made a part hereof, and that there is due from said defendant to this plaintiff on said coupons the sum of $\$75\frac{30}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, 1875.

The plaintiff further says that he became the purchaser and owner of said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $\$1{,}134\frac{44}{100}$, with interest thereon from the 1st day of July, A. D. 1875.

17th. The plaintiff further complains of the said defendant, the Board of County Commissioners of the County of Leavenworth, and alleges that heretofore, to wit, on the 1st day of July, A. D. 1865, the defendant, the said county of Leavenworth, by its duly authorized agents, made and executed its certain other bond of that date, numbered 64, whereby the said Leavenworth county promised to pay to the Leavenworth and Missouri Pacific Railroad Company, or bearer, the sum of one thousand dollars, together with the interest thereon at the rate of seven per cent. per annum, payable semi-annually, with coupons attached thereto for the interest thereon, a copy of which bond and the unpaid coupons attached thereto is hereto attached, marked "A," and made a part of this petition.

The plaintiff alleges that all of the interest coupons originally attached to said bond have from time to time been paid as they matured, by the said county of Leavenworth, in pursuance of
16 the several laws passed by the legislature of the State of Kansas providing therefor, except the coupons copies of which are hereto attached marked, "S," and made part hereof, and that there is due from said defendant to this plaintiff on said coupons the sum of $75\frac{30}{100}$, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875.

The plaintiff further says he became the purchaser and owner of the said bond and coupons for value one year after the date thereof, and is now the owner and holder of said bond and coupons, and that there is due thereon from said defendant to this plaintiff the sum of $1,134\frac{44}{100}$, with interest thereon from the 1st day of July, A. D. 1875.

And the plaintiff alleges that the numbers of the bonds, a copy of one of which is hereto attached, are respectively as follows, to wit: 55, 33, 22, 63, 79, 37, 43, 74, 84, 64, 46, 39, 20, 25, 1, 10, 32.

And plaintiff alleges that there is due to him from said defendant on said bonds and coupons the sum of nineteen thousand three hundred and sixty-nine and $\frac{32}{100}$ dollars, with interest thereon from the 1st day of July, A. D. 1875, at the rate of seven per cent. per annum. Yet the said defendant, though often requested, has not paid said sum of money, or any part thereof or any interest thereon, hitherto hath and still does wholly neglect and refuse to pay said sum of money or any part thereof; and the plaintiff alleges that at all the times herein stated the said Leavenworth and Missouri Pacific Railroad Company was a corporation duly organized under the laws of the State of Kansas.

Wherefore plaintiff prays and demands a judgment against said defendant for the sum of $19,369.32, with interest thereon at the rate of seven per cent. per annum from the 1st day of July, A. D. 1875, and for costs of suit.

STILLINGS & FENLON,
Attorneys for Plaintiff.

17 The clerk of the above-entitled court will please issue summons in above-entitled cause directed to the United States marshal for the district of Kansas, to serve on the defendant, returnable according to law suit brought for the recovery of money, amount claimed, $19,369\frac{32}{100}$, with interest thereon from the 1st day of July, A. D. 1875, and for costs of suit—see petition.

STILLINGS & FENLON,
Attorneys for Plaintiff.

"A."

$1,000. Bond of the county of Leavenworth, State of Kansas. No. 55.

On the 1st day of July, 1875, the county of Leavenworth will pay to the Leavenworth and Missouri Pacific Railroad Company,

or bearer, at the Metropolitan National Bank, in the city of New York, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum from and after the 1st day of September, 1865, payable semi-annually on the first days of March and September, for which coupons are hereto attached, which coupons are receivable for all county dues. This bond is one of two hundred and fifty of like amount, issued in payment of the subscription of the said county of Leavenworth to the capital stock of the Leavenworth and Missouri Pacific Railroad Company under the provisions of the act of the legislature of the State of Kansas, entitled "An act to authorize counties and cities to issue bonds to railroad companies," approved February 10th, 1865, and for the payment of which the faith of the county is pledged. In testimony whereof the board of county commissioners of the said county has, this first day of July, A. D. 1865, caused this bond to be signed by the chairman of the said board and countersigned by the county clerk of said county and attested by the seal of the said county.

C. N. PALMER, *Chairman.*

Countersigned: A. GATES, *Clerk.*

[SEAL.]

18 "A."

$23.33. On the first day of July, 1875, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank in the city of New York, twenty-three dollars and thirty-three cents, being interest on bond No. 55, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 20. C. N. PALMER, *Chairman.*

"A."

$35.00. On the first day of March, 1875, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank in the city of New York, thirty-five dollars, being interest on bond No. 55, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 19. C. N. PALMER, *Chairman.*

"B."

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 55, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 18. C. N. PALMER, *Chairman.*

"B."

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 55, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 17. C. N. PALMER, *Chairman.*

"C."

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 22, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

"C."

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York thirty-five dollars, being interest on bond No. 22, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

D.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National
19 Bank of New York, thirty-five dollars, being interest on bond No. 79, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

D.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 79, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

D.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 79, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

E.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 37, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

E.

$35.00. On the 1st day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 37, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

E.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 37, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

F.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 43, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

F.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 43, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

F.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 43, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

G.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 46, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

G.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 46, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

G.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 46, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

H.

$35.00. On the 1st day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 74, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 18. C. N. PALMER, *Chairman.*

H.

$35.00. On the first day of March, 1874, the county of
21 Leavenworth, will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 74, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 17. C. N. PALMER, *Chairman.*

H.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 74, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 16. C. N. PALMER, *Chairman.*

I.

$35.00. On the first day of September, A. D. 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 84, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 18. C. N. PALMER, *Chairman.*

I.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 84, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 17. C. N. PALMER, *Chairman.*

I.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 84, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 16. C. N. PALMER, *Chairman.*

J.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 33, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 18. C. N. PALMER, *Chairman.*

E.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 37, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

F.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 43, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

F.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 43, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

F.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 43, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

G.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 46, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

G.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 46, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

G.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 46, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

H.

$35.00. On the 1st day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 74, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

H.

$35.00. On the first day of March, 1874, the county of
21 Leavenworth, will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 74, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

H.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 74, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

I.

$35.00. On the first day of September, A. D. 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 84, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

I.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 84, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

I.

$35.00. On the first day of September, 1873, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 84, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 16. C. N. PALMER, *Chairman.*

J.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 33, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

K.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 22 39, issued *to* the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 18. C. N. PALMER, *Chairman.*

"K."

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 39, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 17. C. N. PALMER, *Chairman.*

L.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 20, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 18. C. N. PALMER, *Chairman.*

L.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 20, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 17. C. N. PALMER, *Chairman.*

M.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan Bank of New York, thirty-five dollars, being interest on bond No. 25, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 18. C. N. PALMER, *Chairman.*

M.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 25, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 17. C. N. PALMER, *Chairman.*

N.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 1, issued to the Leavenworth and Missouri Pacific Railroad Company.

(Across the face:) 18. C. N. PALMER, *Chairman.*

23 O.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 10, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

"P."

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 32, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

R.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 63, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

R.

$35.00. On the first day of September, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 63, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

S.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan National Bank of New York, thirty-five dollars, being interest on bond No. 64, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 18. C. N. PALMER, *Chairman.*

S.

$35.00. On the first day of March, 1874, the county of Leavenworth will pay to bearer, at the Metropolitan Bank of New York, thirty-five dollars, being interest on bond No. 64, issued to the Leavenworth and Missouri Pacific Railroad Company.
(Across the face:) 17. C. N. PALMER, *Chairman.*

Endorsed: No. 1,388. Ralph Sellew, plff., vs. The Board of County Commissioners of the County of Leavenworth, deft. Petition and prec. Filed Octo. 11, 1875. A. S. Thomas, clerk. Stillings & Fenlon, attys. for plff.

24 *Security for Costs.*

UNITED STATES OF AMERICA, } ss.
THE STATE OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

RALPH SELLEW, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Leavenworth County, Defendant.

Stillings & Fenlon, residents of Leavenworth county, Kansas, hereby bind and obligate themselves that the plaintiff above named will pay all the costs that may accrue in the above-entitled action in case he shall be adjudged to pay the same; and they further bind and obligate themselves that he will pay all costs made by him in said action in case judgment be obtained against the defendant therein and the same cannot be collected from the defendant.

Given under our hands, at Leavenworth city, Kansas, this 8th day of October, 1875.

STILLINGS & FENLON.

I approve the above bond and the surety thereto, this 11 day of Oct., 1875.

A. S. THOMAS, *Clerk.*

Endorsed: Security for costs. Page —. No. 1,388. District Court Leavenworth County, Kansas. Ralph Sellew vs. The Board of County Commissioners of Leavnth Co. Filed Oct. 11, 1875. A. S. Thomas, clerk.

And on this day, to wit, October 11, 1875, the clerk of said court issued a writ of summons in said entitled action, which said writ of summons with the endorsements and marshal's return thereon is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

25 The United States of America to the Marshal of the District of Kansas, greeting:

You are hereby commanded to notify the Board of County Commissioners of the County of Leavenworth that it has been sued by Ralph Sellow in the Circuit Court of the United States for the District of Kansas, and that unless it answer by the tenth day of November, A. D. 1875, the petition of the said Ralph Sellow against it, filed in the clerk's office of the said court, such petition will be taken as true and judgment rendered accordingly, You will make due return of this writ on the 21st day of October, A. D. 1875.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 11th day of Oct., A. D. 1875.

[SEAL.] A. S. THOMAS, *Clerk.*

Endorsed: Suit brought for the recovery of money. Amount claimed, $19,369$\frac{32}{100}$, with interest from the first day of July, A. D. 1875, at the rate of — per cent. per annum, and for costs of suit. Stillings & Fenlon, attorneys for plaintiff.

No. 1,388. Circuit Court of the United States, District of Kansas. Ralph Sellew vs. the Board of County Commissioners of the County of Leavenworth. Summons. Issued Oct. 11, 1875. Returnable Oct. 21, 1875. Stillings & Fenlon, attorneys for plaintiff.

U. S. Marshal's return. District of Kansas, ss. Rec'd this writ Oct. 11, 1875, and for return of same I certify that I served same on the within-named defendant, the Board of County Commissioners of the County of Leavenworth, on the 12th day of Oct., A. D. 1875, at Leavenworth co., State and Dist. of Kansas, by delivering to Oliver Deifendorf personally a true and certified copy of this writ, with all the endorsements thereon. He, the said Oliver Deifendorf, being then and there the clerk of said defendant, the Board of County Commissioners of the County of Leavenworth, and also clerk of said Leavenworth co. W. S. Tough, U. S. Marshal,
26 by Chas. H. Miller, deputy. Marshal's fees $5.90. Filed Oct. 14, A. D. 1875. A. S. Thomas, clerk.

And on this day, to wit, October 20th, 1875, the defendant, by its attorneys, filed in the clerk's office of said court its answer in said entitled action, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA, } *ss.*
DISTRICT OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

RALPH SELLEW, PLAINTIFF, }
vs. } Answer.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, Defendant. }

And now comes the said defendant, the Board of County Commissioners of the County of Leavenworth, and for answer to the petition of plaintiff filed herein:

First. Denies each and every allegation therein contained, and in each and every of the several pretended causes of action therein set forth, except that plaintiff is a citizen of the State of ———, and defendant is a citizen of the State of Kansas.

Second. For a second and further ground of defence and answer herein defendant refers to each of its other grounds of defence here-

in as parts hereof, and further avers that the pretended railroad company mentioned and described in said pretended bonds and coupons, and referred to in said petition as the Leavenworth and Missouri Pacific Railroad Company, is not now, and was not on the first day of July, A. D. 1865, and never has been a corporation organized or existing under the laws of the State of Kansas, or *or* any other or government or country, as a railroad company or corporation or otherwise

And further avers that said pretended railroad company
27 had not on the first day of July, A. D. 1865, or at the date of the pretended issue of said pretended bonds, and has not at any time since located its railroad to, into, through, from, or near to the county of Leavenworth, in said said state, or elsewhere.

And further avers that said defendant did not subscribe on or before, and has not since the first day of July, A. D. 1865, or at the date of the pretended issue of said pretended bonds, subscribed to the capital stock of said pretended railroad company or corporation in the name of, or for the benefit of said county of Leavenworth, or otherwise at all, the sum of $250,000, or any other sum of money or number of shares or any amount whatever, and does not now own or hold, and never has owned or held any amount of stock, money, or shares whatever, as stock in the capital stock of said pretended railroad company, and further avers that said pretended railroad company had not on the first day of July, A. D. 1865, nor at any time before or since that date, a capital stock of $250,000, or any other or larger sum, or any capital stock whatever. And further avers that said defendant did not, at any time before the pretended issue of said pretended bonds and after the location of said pretended railroad as aforesaid mentioned, subscribe to the capital of said pretended railroad company said sum of $250,000, or any other sum as aforesaid or otherwise.

Third. For a third and further ground of defence and answer herein defendant refers to each of its other grounds of defence herein as parts hereof, and further avers that said defendant never received any consideration of value for said pretended bonds or coupons.

Fourth. For a fourth and further ground of defence and answer herein defendant refers to each of its other grounds of defence herein as parts hereof, and further avers that all said pretended bonds and coupons are held and claimed without any authority of law and are null and void, and that said defendant or its officers or pretended agents in that behalf never had any authority of law or

in fact for issuing or delivering said pretended bonds or
28 coupons in the form thereof or otherwise at all, or for subscribing as aforesaid or otherwise, to said capital stock in the sum of $250,000, or any other sum whatever.

Fifth. For a fifth and further ground of defence and answer herein defendant refers to each of its other grounds of defence

herein as parts hereof, and further avers that said pretended law and act of the legislature of the State of Kansas, entitled "an act to authorize counties and cities to issue bonds to railroad companies," pretended to have been approved February 10th, 1865, did not then, nor has it ever since, become a law of said State of Kansas; that the same was not published by authority of the legislature of the State of Kansas on the 14th day of February, A. D. 1865, or at any time thereafter before the pretended issue of said pretended bonds or coupons, or since that time, and that said pretended act was not, and never had been, passed or enacted, signed, enrolled, or authenticated in pursuance of or in accordance with the constitution of the State of Kansas, and that the same has never been or become a law of said State of Kansas; that said pretended law was pending in said legislature at its session commencing January 10, 1865, by Senate bill No. 63, substituted for Senate bills Nos. 62 and 63, and that it was not read for three separate days in each house, and there was no emergency and the rules were not suspended; that said bill was not passed by a majority of all the members elected to each house, and that the yeas and nays were not taken and entered on the journal upon the final passage of said bill in the Senate, and that said bill was never signed by the presiding officer of said Senate.

Sixth. For a sixth and further ground of defence and answer herein defendant refers to each of its other grounds of defence herein as parts hereof, and further avers that at no time previous to the pretended issue of said bonds and coupons did the Board of County Commissioners of said county of Leavenworth submit to a vote of the qualified electors of said county, at a general or
29 special election called by said Board of County Commissioners, by giving twenty days notice in some newspaper published and having a general circulation in said county, or otherwise, the question of issuing said pretended bonds and coupons and subscribing to said *said* capital stock of said pretended railroad company, in any sum whatever, nor at any such election called as aforesaid were a majority of the votes casted in favor of issuing said pretended bonds, and during the entire year 1865 there was published in said county a newspaper having a general circulation therein; and defendant further avers that the question of issuing said pretended bonds or coupons or subscribing to said capital stock of said railroad company by said defendant in the sum of $250,000, or any other sum or amount, was never submitted to a vote of the qualified voters of said county at any election called by said defendant or its board ofcommissioners according to law, nor was the issue of said pretended bonds or coupons ever authorized by a vote of the qualified electors of said county, and at no time after said pretended election was there a canvass made of such votes by any tribunal authorized to make the same or by any authorized of the said county of Leavenworth.

Seventh. For a seventh and further ground of defence and answer herein defendant refers to each of its other grounds of de-

fence herein as parts hereof, and further avers that the said plaintiff is not an innocent holder for value of said pretended bonds or coupons, by that at the time when he became the owner and holder thereof he had due and sufficient and legal notice that they were illegal and void, and had been issued and delivered without any authority of law, and such notice of all the facts and things aforesaid and hereinafter alleged.

Eighth. For an eighth and further ground of defence and answer herein defendant refers to each of its other grounds of defence
30 herein as parts hereof, and further avers that said pretended bonds and coupons were not issued in payment of calls or assessments made upon all the stocks of such pretended railroad company, but that at the date of such pretended issue of said pretended bonds no legal or valid calls or assessments had been made by said pretended railroad company upon all the pretended shares of stock in said pretended company for or of one hundred cents on the dollar of said capital stock, but that each and every and singular the calls and assessments made were illegal, fraudulent, and void.

And defendant denies each and every allegation in said petition not hereinbefore denied, and of all these said defendant puts itself on the country.

L. M. GODDARD & JOHN C. DOUGLASS,
Attorneys for Deft.

STATE OF KANSAS, } ss.
COUNTY OF LEAVENWORTH. }

John C. Douglass, of lawful age, being duly sworn, deposes and says that he is the attorney of said defendant in said action, and that all the several allegations, averments, denials, and facts stated and contained in said answer, except the last six lines thereof, he believes to be true; this affidavit and verification is made by said affiant for the reason that said facts and things are within the personal knowledge of affiant.

JOHN C. DOUGLASS.

Subscribed in my presence and sworn to before me, this 20th day of October, A. D. 1875.

[SEAL.] A. S. THOMAS, *Clerk.*

Endorsed: No. 1,388. Ralph Shellew vs. The Board of County Commissioners of the County of Leavenworth. Answer. Filed Octo. 20, 1875. A. S. Thomas, clerk. L. M. Goddard & John C. Douglass, attys.

31 And on this day, to wit, October 27, 1875, the plaintiff, by his attorneys, filed in the clerk's office of said court his reply in said entitled action, which said reply is in the words and figures following, to wit:

Reply.

UNITED STATES OF AMERICA, }
DISTRICT OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

RALPH SELLEW, PLFF.,]
vs }
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY } Reply.
of Leavenworth, Deft.]

And now comes Ralph Sellew, the plaintiff herein, and for reply to the answer of the defendant filed herein—

1st. Denies each and every allegation and averment contained in the first, second, third, fourth, sixth, seventh, and eighth grounds of defence therein.

STILLINGS & FENLON,
Attorneys for Plaintiff.

Endorsed: No. 1,388. Ralph Sellew, plff., vs. The Board of County Commissioners of the County of Leavenworth. Reply. Filed Oct. 27, 1875. A. S. Thomas, clerk. Stillings & Fenlon, attys. for plff.

And on this day, to wit, October 27, 1875, the plaintiff, by his attorneys, filed in the clerk's office of said court his motion in said entitled action, which said motion is in the words and figures following, to wit:

Motion.

UNITED STATES OF AMERICA, }
DISTRICT OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

RALPH SELLEW, PLFF.,]
vs. }
THE BOARD OF COUNTY COMMISSIONERS } Motion to strike out.
of the County of Leavenworth, Deft.]

32 And now comes Ralph Sellew, the plaintiff herein, and moves the court to strike out from the answer of the defendant filed herein the fifth ground of defence therein, for the reason that the same contains no matter proper to be submitted to a jury.

STILLINGS & FENLON,
Attys. for Plaintiff.

(Endorsed:) No. 1,388. Ralph Sellew, plff., vs. The Board of County Commissioners of the County of Leavenworth. Motion to strike out from answer. Filed Oct. 27, 1875. A. S. Thomas, clerk.

And on this day, to wit, November 29, 1875, the plaintiff by his attorneys filed in the clerk's office of said court his demurrer in said entitled action, which said demurrer is in the words and figures following, to wit:

Demurrer.

In the Circuit Court of the United States for the District of Kansas.

RALPH SELLEW, PLFF.,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth. } Demurrer.

And now comes the said plaintiff and demurs to the fifth ground of defence in said answer, for the reason that the same does not state facts sufficient to constitute a defence to this action, and because the same is not a proper subject of pleading and is mere surplusage.

By STILLINGS & FENLON, *his Attys.*

Endorsed: No. 1,388. Ralph Sellew vs. The Board of County Commissioners of the County of Leavenworth. Demurrer to 5th ground of defence. Filed Nov. 29, 1875. A. S. Thomas, clerk.

And on this day, to wit, November 29, 1875, the parties hereto by their attorneys filed in the clerk's office of said court their stipulation waiving a jury in said entitled action, which said stipulation waiving a jury is in the words and figures following, to wit:

33 *Stipulation Waiving a Jury.*

In the Circuit Court of the United States for the District of Kansas.

RALPH SELLEW
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Leavenworth County. } No. 161.

It is agreed and stipulated that a jury is waived in the above-entitled case.

STILLINGS & FENLON, *Attys. for Plaintiff.*
J. C. DOUGLASS & L. M. GODDARD,
A. L. WILLIAMS, *Attys. for Defts.*

Endorsed: No. 1388. Ralph Sellew vs. The Board of Comr's of Leav'th Co. Stipulation waiving a jury. Filed Nov. 29, 1875. A. S. Thomas, clerk.

And on this day, to wit, November 29, 1875, in the November term, 1875, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Judgment.

RALPH SELLEW
1388 *vs.*
THE BOARD OF COUNTY COMMISSIONERS OF Leavenworth County, Kansas.

This cause came on to be heard on the motion of the plaintiff to strike out the fifth ground of defence in the answer, and thereupon the plaintiff, by leave of court, filed his demurrer to said fifth ground of defence, on consideration whereof, the court being well advised in the premises, sustained said demurrer, and thereupon the cause came on for trial, and the plaintiff, by his attorneys, Stillings & Fenlon, and the defendant, by its attorneys, L. M. Goddard and J. C. Douglass, waived a jury and submitted this cause to the court by written stipulation filed with the clerk, in this cause on the allegations and proofs, on consideration whereof, the court being well advised in the premises, finds for the plaintiff and assesses
34 the damages of the plaintiff at the sum of nineteen thousand nine hundred twenty-three and $\frac{40}{100}$ dollars. It is therefore considered by the court that said plaintiff have and recover of and from said defendant said sum of nineteen thousand nine hundred twenty-three dollars and forty cents, and all his costs in and about this suit expended, and thereupon the defendant, by its attorneys, filed its motion for a new trial of this cause, which motion for a new trial is hereby continued to the next term of this court.

And on this day, to wit, Dec. 1, 1875, the defendant, by its attorneys, filed in the clerk's office of said court its motion for a new trial in said entitled action, which said motion for a new trial is in the words and figures following, to wit:

Motion for a New Trial.

UNITED STATES OF AMERICA, } *ss.*
DISTRICT OF KANSAS. }

In the Circuit Court of the United States, District of Kansas.

RALPH SELLEW, PLAINTIFF,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, Defendant.

Motion for a New Trial.

And now comes the said defendant and moves the court for a new trial herein on the grounds following, to wit:

First. That the decision of the court herein is not sustained by sufficient evidence and is contrary to law.

Second. That there was error of law occurring at the trial of the same, and excepted to at the time by defendant.

L. M. GODDARD & JOHN C. DOUGLASS,
Attys. for Deft.

Endorsed: No. 1,388. Ralf Sellew vs. The Board of Co. Com. of the Co. of Leavenworth. Motion for a new trial. Filed Dec. 1, 1875. A. S. Thomas, clerk.

35 And on this day, to wit, June 6, 1876, in the June term, 1876, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

RALPH SELLEW
1388 *vs.*
THE BOARD OF COUNTY COMMISSIONERS OF Leavenworth County, Kansas.

It is ordered by the court that this cause be and the same is hereby continued to the next term of this court.

And on this day, to wit, Nov. 28, 1876, in the November term, 1876, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

RALPH SELLEW
1388 *vs.*
THE BOARD OF COUNTY COMMISSIONERS OF Leavenworth County, Kansas.

It is ordered by the court that the motion for a new trial in this action be and the same is hereby continued until the next term of this court.

And on this day, to wit, June 5, 1877, in the June term, 1877, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

RALPH SELLEW
1388 *vs.*
THE BOARD OF COUNTY COMMISSIONERS OF Leavenworth County, Kansas.

Now come the parties herein, by their attorneys, and the defendant's motion for a new trial hereof came on to be heard, and was argued by counsel; on consideration whereof it is ordered by the court that said motion be and the same is hereby overruled.

36 And on this day, October 9, 1877, there was filed in the clerk's office of said court an affidavit in said entitled action, which said affidavit is in the words and figures following, to wit:

Affidavit.

In the Circuit Court of the United States for the District of Kansas.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

I, the undersigned, Thomas P. Fenlon, being first duly sworn, do on oath depose and say, that heretofore, to wit, on the 29th day of November, A. D. 1875, Ralph Sellew did, in and by the consideration of the Circuit Court of the United States for the District of Kansas, obtain a judgment against the county of Leavenworth, in the State of Kansas, for the sum of nineteen thousand nine hundred and twenty-three and $\frac{4}{100}$ dollars, with interest thereon at the rate of seven *seven* per cent. per annum from that time until paid, and for his costs expended in the action in which he recovered that judgment, which costs now amount to a large sum, and the record of said suit is here referred to as a part hereof.

And affiant further deposes and says that John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards are and have been the members of the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, ever since some time in January, A. D. 1876.

And that after the rendition of said judgment, and on the sixth day of August, A. D. 1877, request and demand was by the plaintiff in said suit, by Stillings & Fenlon, their attorneys, made of and on said Van Winkle, Lucas, and Richards, that they as the board of county commissioners of said county, on Monday, the sixth day of August, A. D. 1877, and at the meeting by them, the said commissioners, by law required to be held on that day, levy a tax on all property subject to taxation for any of the purposes herein-
37 after mentioned, and on all the taxable property in said county of Leavenworth, in the State of Kansas, sufficient in amount for the payment of said judgment, and that they so levy such tax for the purpose of, and to provide funds for, the payment of said judgment.

And affiant further says that said commissioners have not levied said tax, nor has any such tax been levied either in whole or in part.

And affiant further says that the first above-mentioned sum of money for which plaintiff so recovered said judgment, and all accrued interest thereon, and the costs by said plaintiff recovered in said suit, remain wholly unpaid and unsatisfied.

THOMAS P. FENLON.

Signed in my presence and sworn to before me, the undersigned, this 9th day of October, A. D. 1877. In witness whereof I hereto set my hand and affix my seal the day and year last aforesaid.

A. S. THOMAS, *Clerk.*

Endorsed: No. 1,388. Ralph Sellew vs. Board of County Commissioners of Leavenworth Co. Affidavit. Filed Oct. 9, 1877. A. S. Thomas, clerk.

And on this day, to wit, October 9, 1877, in the June term, 1877, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

RALPH SELLEW, PLAINTIFF,
1,388. *vs.*
BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, Defendant.

And now, on this ninth day of October, A. D. 1877, comes Ralph Sellew, the above-named plaintiff, by Stillings & Fenlon, his attorneys, and comes also the Board of County Commissioners of the
38 County of Leavenworth, by J. H. Gilpatrick, their attorney, and thereupon said plaintiff moves the court upon affidavit for a peremptory writ of mandamus to the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, and to John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, members of said board of county commissioners, commanding them that the Board of County Commissioners of the County of Leavenworth aforesaid, and the said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, as the Board of County Commissioners of the County of Leavenworth aforesaid, immediately upon the receipt of such writ, levy a tax on all property subject to taxation for any of the purposes herein mentioned, and on all the taxable property in said county of Leavenworth, in the State of Kansas, sufficient in amount for the payment of the judgment heretofore rendered in this action on the 29th day of November, 1875, for nineteen thousand nine hundred and twenty-three and $\frac{40}{100}$ dollars, and costs now amounting to the sum of seventy-two dollars and eighty cents, and for the purpose of, and to provide funds for, the payment of said judgment; which motion for a peremptory writ was, as to the writ being peremptory, refused, but on a like motion of said plaintiff, Ralph Sellew, for an alternative writ of the same nature now made, said motion is now by the court here sustained for such alternative writ, and it is now by the court here ordered that an alternative writ of mandamus be and is now here allowed and ordered to issue to and against the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, commanding them that the Board of County Commissioners of the County of Leavenworth aforesaid, and the said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, as the Board of County Commissioners of the County of Leavenworth aforesaid, immediately upon the receipt of such writ, levy a tax on all property subject to taxation for any of the purposes herein mentioned, and on all the taxable property in said county of Leavenworth, in the State of Kansas,
39 sufficient in amount for the payment of the aforesaid judgment, and for the purpose of, and to provide funds for, the

payment of said judgment, or show cause before said circuit court, at Topeka, in said district of Kansas, on the 26th day of November, A. D. 1877, that is, on the first day of the next term thereof, why they have not done so, and that they then and there return such writ, with their certificate of having done as thereby commanded.

And on this day, to wit, November 10th, 1877, there was filed in the clerk's office of said court, copy of alternative writ of mandamus, which said copy of alternative writ of mandamus, with the endorsements and marshal's return thereon, is in the words and figures following, to wit:

Copy of Alternative Writ of Mandamus.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

THE UNITED STATES OF AMERICA

To the Board of County Commissioners of the County of Leavenworth, and to John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, members of the Board of County Commissioners of the County of Leavenworth, in the State of Kansas.

Whereas heretofore, to wit, on the 29th day of November, A. D. 1875, Ralph Sallew did, in and by the consideration of the Circuit Court of the United States for the District of Kansas, obtain a judgment against the county of Leavenworth, in the State of Kansas, for the sum of nineteen thousand nine hundred twenty and $\frac{40}{100}$ dollars, with interest thereon at the rate of seven per cent. per annum from that time until paid, and for his costs expended in the action in which he recovered that judgment, which costs now amount to a large sum, that is, to the sum of $\$73\frac{20}{100}$.

And whereas you, the said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, are and have been the members of the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, ever since some time in January, A. D. 1876.

And whereas, after the rendition of said judgment, and before the sixth day of August, A. D. 1877, request and demand were, by the plaintiff in said suit, by Stillings & Fenlon, his attorneys, made of and on you, the said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, that you as the board of county commissioners of said county, on Monday, the sixth day of August, A. D. 1877, and at the meeting by you as such commissioners by law required to be held on that day, levy a tax on all property subject to taxation for any of the purposes hereinafter mentioned, and on all the taxable property in said county of Leavenworth, in the State of Kansas, sufficient in amount for the payment of said judgment, and that you so levy such tax for the purpose of, and to provide funds for, the payment of said judgment.

And whereas you have not levied said tax, and whereas there has not any such tax been levied, either in whole or in part, and whereas due notice was given you that said plaintiff would, on Monday, the eighth day of October, A. D. 1877, at ten o'clock A. M. of that day, or as soon thereafter as he could be heard, at the court-room where said circuit court is usually held, in the city of Leavenworth, in
41 the State of Kansas, apply to and move said circuit court for a peremptory writ of mandamus, commanding you that immediately upon the receipt of such writ you, as the Board of County Commissioners of the County of Leavenworth aforesaid, levy a tax on all property subject to taxation for any of the purposes hereinafter mentioned, and on all the taxable property in said county of Leavenworth, in the State of Kansas, sufficient in amount for the payment of the aforesaid judgment, and for the purpose of, and to provide funds for, the payment of said judgment, and whereas said judgment still remains in full force and effect and wholly unpaid and unsatisfied.

And whereas you, the said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, have omitted and still omit to levy such tax as aforesaid on the property aforesaid, or any thereof, although and it was your duty as the board of county commissioners of said county to have long since, and on said sixth day of August, A. D. 1877, levied such tax on the property aforesaid.

Now, therefore, we being willing that full and speedy justice should be done in the premises, do command you that the Board of County Commissioners of the County of Leavenworth aforesaid, and you, the said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, immediately upon the receipt of this writ, as the Board of County Commissioners of the County of Leavenworth aforesaid, levy a tax on all property subject to taxation for any of the purposes herein mentioned, and on all the tax-
42 able property in said county of Leavenworth, in the State of Kansas, sufficient in amount for the payment of the aforesaid judgment, and for the purpose of, and to provide funds for, the payment of said judgment, or show cause before said circuit court at Topeka, in said district of Kansas, on the 26th day of November, A. D. 1877, that is, on the first day of the next term thereof, why you have not done so; and that you then and there return this writ, with your certificate of having done as you are herein commanded.

This writ having been allowed by the Circuit Court of the United States for the District of Kansas, on the day of the date hereof, it is now issued by said circuit court.

Witness Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, with the seal of said circuit court hereto affixed, at Leavenworth, in said district of Kansas, this 9th day of October, A. D. 1877.

[SEAL.]

A. S. THOMAS,
Clerk of said Circuit Court of the U. S. for the District of Kansas.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

This the within writ is allowed by the Circuit Court of the United States for the District of Kansas, this 9th day of October, A. D. 1877. C. G. FOSTER, *Judge.*

43 Endorsed: No. 1388. Ralph Sallew vs. The Board of County Commissioners of the County of Leavenworth. Mandamus.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

I, Chas. H. Miller, Marshal of the United States for the District of Kansas, do hereby certify the within and foregoing to be a true, full, and perfect copy of the original mandamus now in my possession, with all endorsements thereon.

CHAS. H. MILLER,
U. S. Marshal for the District of Kansas,
By —— ——, *Deputy.*

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss.*

I received an original writ of mandamus of which, and the endorsements thereon, the within and hereto annexed is a copy, on the 21st day of October, A. D. 1877, at 10 o'clock A. M. of that day, and I have served the same in the county of Leavenworth in the State of Kansas, on the Board of County Commissioners of the County of Leavenworth in the State of Kansas, and on the therein named John S. Van Winkle, Ebenezer W. Lucas, and Blackwall S. Richards, the members of said board of county commissioners, by exhibiting and showing said writ of mandamus and the seal thereto affixed of the therein-mentioned Circuit Court of the United States for the District of Kansas, and the allowance of said writ thereon endorsed, to said Blackwell S. Richards, and by delivering to him, the said Blackwell S. Richards, personally a copy of said
44 writ of mandamus, with all the endorsements thereon, on the 22d day of October, A. D. 1877, and by exhibiting and showing said writ of mandamus, and the seal of said court thereto affixed and said allowance of said writ thereon endorsed, to said Ebenezer W. Lucas, and by delivering to him, the said Ebenezer W. Lucas, personally a copy of said writ of mandamus, with all the endorsements thereon, on the 9th day of November, A. D. 1877, and by exhibiting and showing said writ of mandamus and the seal of said court thereto affixed and the allowance of said writ thereon endorsed, to Oliver Diefendorf, the county clerk of said county of Leavenworth and the clerk of said board of county commissioners, and by delivering to him, the said Oliver Diefendorf, personally as such clerk a copy of said writ of mandamus, with all the endorsements

thereon, on the 22d day of October, A. D. 1877, and by delivering said original writ of mandamus to said John S. Van Winkle personally on the 9th day of November, A. D. 1877, he at that time being the chairman of said Board of County Commissioners of the County of Leavenworth aforesaid.

CHAS. H. MILLER,
U. S. Marshal for the District of Kansas.

Marshal's fees, $8.00.
Filed Nov. 10, 1877. A. S. THOMAS, *Clerk.*

45 And on this day, to wit, November 28, 1877, the defendant, the Board of County Commissioners of the County of Leavenworth, by its attorneys, filed in the clerk's office of said court its motion to quash alternative writ of mandamus in said entitled suit, which said motion to quash alternative writ of mandamus is in the words and figures following, to wit:

Motion to Quash Alternative Writ of Mandamus.

UNITED STATES OF AMERICA, } *ss.*
DISTRICT OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

RALPH SALLEW, PLAINTIFF,
against
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth, and John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, members of the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, Defendants.

Motion to quash alternative writ of mandamus.

And now comes the above-named defendant, the board of county commissioners, and appearing for the purpose of this motion only, moves the court to quash the alternative writ of mandamus heretofore issued in the above entitled action, because the same does not state facts sufficient to constitute a cause of action against said defendant, nor to entitle plaintiff to the peremptory writ of mandamus prayed for.

MATT. H. CARPENTER &
TAYLOR & GILLPATRICK,
Attys. for Defts.

Endorsed: 1,388. Ralph Sallew vs. The B'd Co. Com'rs Leavenworth Co. Motion to quash. Filed Nov. 28, 1877. A. S. Thomas, clerk.

And on this day, to wit, November 28, 1877, the defendants, by their attorneys, filed in the clerk's office of said court the
46 writ of mandamus issued in said entitled action, together with their answer thereto, which said writ of mandamus and the answer thereto are in the words and figures following, to wit:

Mandamus.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

The United States of America to the Board of County Commissioners of the County of Leavenworth, and to John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, members of the Board of County Commissioners of the County of Leavenworth, in the State of Kansas.

Whereas, heretofore, to wit, on the 29th day of November, A. D. 1875, Ralph Sallew did, in and by the consideration of the Circuit Court of the United States for the District of Kansas, obtain a judgment against the county of Leavenworth, in the State of Kansas, for the sum of nineteen thousand nine hundred twenty and $\frac{40}{100}$ dollars, with interest thereon at the rate of seven per cent. per annum from that time until paid, and for his costs expended in the action in which he recovered that judgment, which costs now amount to a large sum, that is, to the sum of $\$73\frac{70}{100}$.

And whereas you, the said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, are and have been the members of the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, ever since some time in January, A. D. 1876.

And whereas, after the rendition of said judgment, and before the sixth day of August, A. D. 1877, request and demand were by the plaintiff in said suit, by Stillings & Fenlon, his attorneys, made of and on you, the said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, that you, as the board of county commissioners of said county, on Monday, the sixth day of August, A. D. 1877, and at the meeting by you, as such commissioners, by law required to be held on that day, levy a tax on all property
47 subject to taxation for any of the purposes hereinafter mentioned, and on all the taxable property in said county of Leavenworth, in the State of Kansas, sufficient in amount for the payment of said judgment, and that you so levy such tax for the purpose of and to provide funds for the payment of said judgment.

And whereas you have not levied said tax, and whereas there has not any such tax been levied, either in whole or in part, and whereas due notice was given you that said plaintiff would, on Monday, the eighth day of October, A. D. 1877, at ten o'clock A. M. of that day, or so soon thereafter as he could be heard, at the court-room where said circuit court is usually held, in the city of Leavenworth, in the State of Kansas, apply to and move said circuit court for a peremptory writ of mandamus commanding you that immediately upon the receipt of such writ you, as the Board of County Commissioners of the County of Leavenworth aforesaid,

levy a tax on all property subject to taxation for any of the purposes hereinafter mentioned, and on all the taxable property in said county of Leavenworth, in the State of Kansas, sufficient in amount for the payment of the aforesaid judgment, and for the purpose of and to provide funds for the payment of said judgment; and whereas said judgment still remains in full force and effect and wholly unpaid and unsatisfied.

And whereas you, the said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, have omitted and still omit to levy such tax as aforesaid on the property aforesaid, or any thereof, although and it was your duty as the board of county commissioners of said county to have long since, and on said sixth day of August, A. D. 1877, levied such tax on the property aforesaid.

Now, therefore, we being willing that full and speedy justice should be done in the premises, do command you that the Board of County Commissioners of the County of Leavenworth aforesaid, and you, the said John S. Van Winkle, Ebenezer W. Lucas,
48 and Blackwell S. Richards, immediately upon the receipt of this writ, as the Board of County Commissioners of the County of Leavenworth aforesaid, levy a tax on all property subject to taxation for any of the purposes herein mentioned, and on all the taxable property in said county of Leavenworth, in the State of Kansas, sufficient in amount for the payment of the aforesaid judgment, and for the purpose of and to provide funds for the payment of said judgment, or show cause before said circuit court at Topeka, in said district of Kansas, on the 26th day of November, A. D. 1877, that is, on the first day of the next term thereof, why you have not done so; and that you then and there return this writ, with your certificate of having done as you are herein commanded.

This writ having been allowed by the Circuit Court of the United States for the District of Kansas, on the day of the date hereof, it is now issued by said circuit court.

Witness Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, with the seal of said circuit court hereto affixed, at Leavenworth, in said district of Kansas, this the 9th day of October, A. D. 1877.

[SEAL.]

A. S. THOMAS,
Clerk of said Circuit Court of the U. S. for the District of Kansas.

Endorsed:

UNITED STATES OF AMERICA, } ss
DISTRICT OF KANSAS. }

This, the within writ, is allowed by the Circuit Court of the United States for the District of Kansas, this 9th day of October, A. D. 1877.

C. G. FOSTER, *Judge.*

No. 1,388. Ralph Sallew vs. The Board of County Commissioners of the County of Leavenworth. Mandamus.

Answer to Mandamus.

UNITED STATES OF AMERICA, } ss.
DISTRICT OF KANSAS. }

In the Circuit Court of the United States for the District of Kansas.

RALPH SALLEW, PLAINTIFF,
against
THE BOARD OF COUNTY COMMISSIONERS OF the County of Leavenworth, and John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, members of the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, Defendants. } Answer.

And now comes the defendants, John S. Van Winkle, Blackwell S. Richards, and Ebenezer W. Lucas, and for answer and return to the alternative writ of mandamus heretofore, to wit, on the 9th day of October, A. D. 1877, issued in the above-entitled action, out of the above-entitled court, alleges:

First. That said plaintiff ought not to have the said writ of peremptory mandamus, because they say, the said defendant, the board of county commissioners aforesaid, met on the first Monday in August, A. D. 1877, in pursuance of the statute of the State of Kansas in such case made and provided, and proceeded to estimate and determine, and did estimate and determine, the amount of money to be raised by taxation for all county purposes and all other taxes which they were required by law to levy for the year A. D. 1877, and did estimate and determine; for state and school fund it would require five and one-half (5½) mills on the dollar; for the current expenses of the county, four and one-half (4½) mills on the dollars; for the support of the poor, one (1) mill on the dollar; for county bridges and repairs, road expenses and damages, one-half (½) of one mill on the dollar; for interest on bonds to redeem county warrants, three-fourths (¾) of one mill on the dollars; for interest on court-house bonds, three (3) mills on the dollar; for payment of interest and principal on renewed ten per cent. county bonds, series three (3), issued July 1st, A. D. 1876, one (1) mill on the dollar; for payment of interest and principal on bonds, series four (4), issued July 1st, 1876, for funding outstanding in-
50 debtedness of the county, one-half (½) of one mill on the dollar; for judgments, three (3) mills on the dollars. After which, and after having so determined and estimated the amount of money to be raised by tax for all county purposes and all other taxes which they were required by law to levy, and having performed their duty in the premises, adjourned said meeting sine die.

Second. That immediately after said meeting had adjourned as aforesaid, to wit, on the 6th day of August, A. D. 1877, the county

clerk of said county of Leavenworth proceeded to make out the tax roll of said county and to determine the sums to be levied on each tract and lot of land in the name of the owner if known, and upon the amount of personal property in the name of each person, company, or corporation, and to assess the same equally upon all real and personal property in said county, subject to the same tax, and that said county clerk completed said tax-roll on the first day of November, A. D. 1877, and attached his certificate thereto, and on said last day delivered the same to the county treasurer of said county, who has had possession of the same ever since that time, and the said county clerk on said last day, and before delivering said roll to said treasurer, charged the said treasurer, on the books of the county, with the amount of the respective taxes assessed in said roll, and that on the 15th day of November, A. D. 1877, the said county clerk transmitted to the auditor of state a statement showing the total amount of taxes levied in said Leavenworth county for all purposes for the year A. D. 1877, and the rate per cent.

Third. That the county treasurer of Leavenworth county, Kansas, immediately after receiving said tax-roll as aforesaid, did, on the third day of November, A. D. 1877, caused to be published in the Weekly Times, a newspaper having general circulation in said county, a notice stating the amount of taxes charged for state, county, township, school, city, and other purposes, on each one hundred dollars valuation of the property of said county, which said
51 notice was published for two consecutive weeks in said paper.

Fourth. That a large number of the tax-payers of said Leavenworth county have paid to the treasurer of said county the amount of their taxes in full for the year A. D. 1877, shown to have been levied and due upon their property as aforesaid, and have taken the treasurer's receipt therefor, as provided by law.

Sixth. That a large portion of the demand of said plaintiff, and for which he asks that a peremptory writ may be issued to compel this board to levy a tax to pay and satisfy, to wit, the sum of $73.20, is for costs supposed to have been expended in the action in which the judgment referred to in the alternative writ was rendered.

Seventh. The judgment mentioned in the alternative writ was not rendered on any of the kinds of indebtedness mentioned in the proviso in section one (1) chapter ninety (90) of the session laws of the State of Kansas of 1876.

Eighth. That there was a general election held in the county of Leavenworth, in the State of Kansas, under and by virtue of the laws of the State of Kansas, on the 6th day of November, A. D. 1877, for the election of, among other county officers, "the members of the board of county commissioners of said county, and that the defendants, John S. Van Winkle and Ebenezer W. Lucas were not re-elected, but others were duly elected members of said board

in their place, and that said John S. Van Winkle and Ebenezer W. Lucas will not be members of said board after their present term of office expires.

MATT. H. CARPENTER &
TAYLOR & GILLPATRICK,
Attys. for Defts.

Endorsed: 1388. Ralph Sallew vs. The Board of County Commissioners of Leavenworth County et al. Answer & Return. Filed Nov. 28, 1877. A. S. Thomas, clerk. Matt. H. Carpenter & Taylor & Gillpatrick, attys. for defts.

52 And on this day, to wit, December 6th, 1877, in the November term, 1877, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

RALPH SELLEW, PLAINTIFF,
1388. *vs.*
THE BOARD OF COUNTY COMMISSIONERS OF Leavenworth County, Kansas, Defendants.

And now comes the plaintiff herein, by Stillings & Fenlon, his attorneys, and also come the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, and John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, by Taylor & Gillpatrick, their attorneys, and thereupon said Board of County Commissioners of the County of Leavenworth moved the court to quash the alternative writ of mandamus heretofore issued herein, and the court having heard said motion now overrules the same, to which ruling and decision of the court said board of county commissioners excepts, and thereupon said plaintiff moved the court to quash the return of said Van Winkle, Lucas, and Richards to said writ, and the court having heard and duly considered said motion now sustains the same, and orders that said return be, and the same is, held insufficient and quashed, to which ruling and decision of the court said Van Winkle, Lucas, and Richards except; and thereupon, on motion of said plaintiff, it is now by the court here ordered that a peremptory writ of mandamus be, and is hereby, granted, allowed, and ordered to issue herein to and against the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, commanding it to levy on or before the first Monday of the month of August next, and collect at the same time and in the same manner that general taxes are levied and collected, a tax on all property subject to taxation for any of the purposes in
53 said alternative writ mentioned and on all the taxable property in said county of Leavenworth, in the State of Kansas, sufficient in amount for the payment of the judgment heretofore rendered in this action, that is, the judgment in said alternative writ

mentioned, and for the purpose of and to provide funds for the payment of said judgment, including costs; and it is now by the court here considered, ordered, and adjudged that said plaintiff have and recover his costs herein expended on these mandamus proceedings from said defendant and from said John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, and that execution issue therefor.

And on this day, to wit, December 13th, 1877, in the November term, 1877, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Journal Entry.

RALPH SELLEW
1,388 *vs.*
THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth.

And now comes said defendant, by Taylor and Gillpatrick, its attorneys, and present to the court here its bill of exceptions herein, and the same is signed and allowed and ordered by the court to be placed on file and made a part of the record in this action.

And on this day, to wit, December 13, 1877, the defendants, by their attorneys, filed in the clerk's office of said court their bill of exceptions in said entitled action, which said bill of exceptions is in the words and figures following, to wit:

Bill of Exceptions.

UNITED STATES OF AMERICA,
DISTRICT OF KANSAS.

In the Circuit Court of the United States for said District.

54 THE UNITED STATES, ON THE RELATION OF Ralph Sallew, *against* THE BOARD OF COUNTY COMMISSIONERS OF THE County of Leavenworth and John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, members of the Board of County Commissioners of the County of Leavenworth, in the State of Kansas, Respondents. } Bill of Exceptions.

Be it remembered, that at the November term, 1877, and on the 28th day of November, A. D. 1877, in the above-entitled court, the above-named respondent, the board of county commissioners, made its motion to quash the alternative writ of mandamus heretofore, to wit, on the 9th day of October, A. D. 1877, issued in the above-entitled action, because the said writ was improperly directed to said board and because said board, as a board, was improperly joined

as a respondent therein; and at the same time the said board made a motion to quash the service of said writ, because the same had not been served on said board according to law, as shown by the return of the officer serving the same; and at the same time the said respondents, John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, moved the court to quash said alternative writ, because the same was misdirected and because there was a misjoinder of respondent and because the same did not state facts sufficient to entitle the relator to the peremptory writ of mandamus as prayed for.

And all of said motions coming on to be heard together, the court, after having heard the arguments of counsel thereon and having had the same under advisement and being well ad-
55 vised in the premises, and on the 6th day of December, A. D. 1877, overruled each and all of said motions. To which rulings and decisions of the court said respondents, and each of them, then and there duly excepted and thereupon prayed the court to allow and sign this, their bill of exceptions, and order the same to be made a part of the record in the case, which is now accordingly done. C. G. FOSTER, *Judge.*

Endorsed: No. 1,388. The United States, ex rel. Ralph Sellew, vs. The Board of County Commissioners of the County of Leavenworth. Bill of exceptions. Filed December 13, 1877. A. S. Thomas, clerk.

56

57 UNITED STATES OF AMERICA, } *ss.*
DISTRICT OF KANSAS. }

I, A. S. Thomas, clerk of the Circuit Court of the United States of America for the District of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy from the record of all the proceedings in the case of Ralph Sellew vs. The Board of County Commissioners of Leavenworth County, Kansas, No. 1,388 in said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this tenth day of June, A. D. 1878.

A. S. THOMAS, *Clerk,*
By J. N. STRICKLER, *Deputy.*

58

59 UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the Circuit Court of the United States for the District of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you,

between Ralph Sellew, plaintiff, and the Board of County Commissioners of the County of Leavenworth, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this ninth day of March, A. D. 1878.

A. S. THOMAS,

[SEAL.] *Clerk of the Circuit Court of the United States for the District of Kansas.*

Allowed:

C. G. FOSTER, *Judge.*

60 (Endorsed:) No. 1,388. Ralph Sellew vs. The Board of County Commissioners of the County of Leavenworth. Writ of error. Filed June 22, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

61 The United States of America to Ralph Sellew and Stillings and Fenlon, his attorneys of record, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the District of Kansas, wherein The Board of County Commissioners of the County of Leavenworth is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable C. G. Foster, one of the judges of the Circuit Court of the United States in and for the District of Kansas, this 22d day of June, A. D. 1878.

C. G. FOSTER, *Judge.*

Service of the above citation accepted on this 22d day of June, A. D. 1878.

E. STELLINGS,
THOMAS P. FENLON, &
SELLINGS & FENLON,
Attys. for Ralph Sellew, Deft. in Error.

(Endorsed:) No. 1,388. Filed June 24, 1878. A. S. Thomas, clerk, by J. N. Strickler, deputy.

(Endorsed on cover:) Kansas C. C. U. S. No. 743. The Board of County Commissioners of the County of Leavenworth, plaintiff in error, vs. Ralph Sellew. Filed 28th August, 1878.

Supreme Court United States.

OCTOBER TERM, 1878.

No. 743.

THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH,

Plaintiff in Error,

vs.

RALPH SELLEW, Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

MATT H. CARPENTER,
TAYLOR & GILLPATRICK,
Of Counsel for Plaintiff in Error.

Thomas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 743.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LEAVENWORTH, PLAINTIFF IN ERROR,

vs.

RALPH SELLEW.

STATEMENT OF CASE.

Ralph Sellew, the defendant in error, recovered judgment against the Board of County Commissioners of the county of Leavenworth, in the Circuit Court of the United States for the district of Kansas, on the 29th day of November, 1875, for the sum of $19,923.40 and costs. (Record, p. 25.)

This judgment was rendered on certain bonds executed by the county in aid of the Leavenworth and Missouri Pacific Railroad Company. (Record, p. 1.)

October 9, 1877, the judgment creditor filed in said Circuit Court an affidavit for a mandamus, to compel the levy of a tax to pay the judgment. (Record, p. 27.)

This affidavit set forth the recovery of the judgment; that on the 6th day of August, 1877, the creditor had de-

manded of John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, members of the county board, "That they, as the Board of County Commissioners of said county, on Monday, the sixth day of August, A. D. 1877, and at a meeting by them, the said commissioners, by law required to be held on that day, levy a tax on all property subject to taxation, &c., sufficient in amount for the payment of the judgment," &c.; but that they had not done so, and that the judgment remained wholly unpaid. (Record, p. 27.)

Whereupon, on the 9th day of October, 1877, upon motion, an alternative writ of mandamus was issued out of the said Circuit Court, directed as follows: "*To the Board of County Commissioners of the county of Leavenworth, and to John S. Van Winkle, Ebenezer W. Lucas, and Blackwell S. Richards, members of the Board of County Commissioners of the county of Leavenworth, in the State of Kansas;*" reciting the premises, the judgment, the demand, and the neglect to levy the tax; and commanding the levy to be made *immediately upon the receipt of the writ*, or that the reason why it had not been done should be shown to the court by return to the writ on November 26, 1877. (Record, pp. 29, 30.)

November 28, 1877, the Board of Commissioners moved to quash the alternative writ, upon the ground that it did not show facts sufficient to constitute a cause of action against said Board of Commissioners, nor sufficient to entitle the plaintiff to the writ of peremptory mandamus prayed for. (Record, 32.)

And the individual members of the board, that is, Van Winkle, Richards, and Lucas, returned and answered the writ, averring—

(1.) That the Board of Commissioners met on the 6th day of August, 1877, and levied all the taxes required by law to be levied, and then adjourned *sine die*.

(2.) That immediately thereafter the county clerk made out the tax-roll for the year 1877, and completed the same, as required by law, on the 1st day of November, 1877; attached his certificate thereto, and delivered the same to the county treasurer for collection; that on the 15th of November, 1877, the county clerk, as required by law, transmitted to the auditor of State a statement showing the total amount of taxes levied in said county, for all purposes, for said year 1877.

(3.) That the county treasurer, after receiving the said roll for collection, did, on the 3d day of November, 1877, cause publication to be made, &c.

(4.) That a large number of the tax-payers of the county had made payment of said taxes, and had taken receipts therefor.

(5.) That a portion of the demand of the plaintiff, for which he demanded peremptory writ of mandamus, was for costs in the original action.

(6.) That said judgment was not rendered on any of the kinds of indebtedness mentioned in the proviso in section 1, chapter 90, of the session laws of Kansas for the year 1877.

(7.) That a general election was held on the 6th day of November, 1877, for the election of members of the said board, and that said Van Winkle and said Lucas were not re-elected, and would not be members of the board after the expiration of their then term, January 1, 1878. (Record, pp. 35, 36, 37.)

The motion made by the board to quash the alternative writ was denied, and the board excepted; and the return made by the individual members of the board was quashed, and they excepted; and a bill of exceptions was settled, showing the respective motions, rulings, and exceptions. (Record, pp. 37, 38, 39.)

Assignments of Error.

(1.) The court erred in overruling the motion of the Board of Commissioners to quash the alternative writ.

(2.) The court erred in quashing the return made by the individual members of said board.

(3.) The court erred in granting the writ of peremptory mandamus against the Board of Commissioners, on the facts shown by the record.

(4.) The court erred in granting a writ directed "to the Board of County Commissioners of the county of Leavenworth," instead of issuing the same directed to the individual persons composing said board.

Points and Authorities.

I.

Two recent and well-considered decisions of this court—*The Secretary* v. *McGarrahan*, 9 *Wall.*, 298, and *The United States* v. *Boutwell*, 17 *Wall.*, 607—condemn the proceedings in the case at bar as erroneous. In the Boutwell case, this court say:

"The office of a writ of mandamus is to compel the performance of a duty resting upon the person to whom the writ is sent. That duty may have originated in one way or in another. It may, as is alleged in the present case, have arisen from the acceptance of an office which has imposed the duty upon its incumbent. But no matter out of what facts or relations the duty has grown, what the law regards and what it seeks to enforce by a writ of mandamus is the personal obligation of the individual to whom it addresses the writ. If he be an officer, and the duty be an official one, still the writ is aimed exclusively against him as a person, and he only can be punished for disobedience. *The writ does not reach the office. It cannot be directed to it.* It is, therefore, in substance, a personal action, and it rests

upon the averred and assumed fact that the defendant has neglected or refused to perform a personal duty, to the performance of which, by him, the relator has a clear right. Hence it is an imperative rule, that previous to making application for a writ to command the performance of any particular act, an express and distinct demand or request to perform it must have been made by the relator or prosecutor upon the defendant, and it must appear that he refused to comply with such demand, either in direct terms or by conduct from which a refusal can be conclusively inferred. (*Tappan on Mandamus*, 283.) Thus it is the personal default of the defendant that warrants impetration of the writ, and if a peremptory mandamus be awarded, the costs must fall upon the defendant. It necessarily follows from this, that on the death or retirement from office of the original defendant, the writ must abate, in the absence of any statutory provision to the contrary. Where the personal duty exists only so long as the office is held, the court cannot compel the defendant to perform it after his power to perform has ceased. And if a successor in office may be substituted, he may be mulcted in costs for the fault of his predecessor, without any delinquency of his own. Besides, were a demand made upon him, he might discharge the duty and render the interposition of the court unnecessary. At all events, he is not in privity with his predecessor, much less is he his predecessor's personal representative."

If, as this court say, mandamus is a personal action against the officer, not against the office; if the writ is to be aimed against the defendant as a person, or against the defendants as persons, then it is certain that the peremptory writ in this case was issued erroneously. It runs not to "persons" constituting the board, but to the board itself, commanding the levy of the tax not while the persons served with the alternative writ would be in office, but on or before the first Monday of August, 1878, at which time a majority of the board would be "persons" who had never had a chance to levy the tax; had never been requested nor had refused to levy the tax; had never been served with the alternative writ, nor had day in court or opportunity to be heard in the premises.

It is sought to distinguish the case at bar from the cases above referred upon two grounds:

(1.) That the proceeding in this case is in the nature of an execution on the judgment rendered on the bonds; and

(2.) That in the case at bar there are three officers, who together constitute the board; whereas in the cases cited the defendant was the only incumbent of the office, the duties of which were sought to be forced into exercise.

We submit that neither of these grounds can be relied upon to take the case at bar out of the principle settled by this court.

(1.) It is true that the rendition of the judgment on the bonds, was the event which made it the duty of the commissioners, under the law, to levy the tax. In other words, under the facts of this case, it had become the duty of these officers to perform a certain act. It is said they have neglected or refused to perform this duty, and hence the writ of *mandamus* is invoked to compel them to perform a duty, not under the judgment, but under the law of the State. The commissioners are not Federal officers. They can in no way interfere in execution of a judgment on the bonds, rendered by the Federal court. They are to proceed, not in the performance of a duty cast upon them by the judgment, but under the obligation which *the State law* lays upon them as State officers. If they refuse to act under the State law, and levy the tax, then *mandamus* may compel them to the performance of the duty imposed by such law. To prove this distinction between the force of the judgment and the obligation imposed by the State statute, suppose such judgment to be rendered on the bonds, and yet with or without request or demand the commissioners neglect or refuse to levy the tax,—would it be contended that they could be punished for contempt of court in disobeying or disregarding the judgment? Certainly not. Nor could a *mandamus* be issued, after the

judgment, but for the reason that the State law makes it the duty of the commissioners to levy a tax to pay it. "A *mandamus* does not confer power upon those to whom it is directed. It only enforces the exercise of power already existing when its exercise is a duty." (*United States* v. *County of Clark*, 5 Otto, 773.)

Although the relator or plaintiff in the *mandamus* resorts to this action as a means of obtaining the fruit of his judgment, yet the *mandamus* is an independent action, as distinct from the action in which he recovered his judgment, as would be an action on the case against the commissioners to recover damages for neglect of duty in not levying the tax. The proceedings by *mandamus* are no more a part of the original suit than is a judgment-creditor's bill filed on the equity side of the court to enforce a judgment at law; or a judgment-creditor's bill filed in a State court to enforce a judgment at law rendered in a Federal court, a part of the suit in which such judgment was rendered. No one would contend that such judgment-creditor's suit was not subject to the ordinary jurisprudence, and practice of courts of equity, because its object was to recover money which had been adjudged to the plaintiff by a court of law.

(2.) Nor is the fact that the duty sought to be compelled must be performed by three officers instead of one, at all material. Suppose the Treasury Department to be organized with three secretaries or commissioners as its head, and suppose them to neglect the performance of some ministerial duty cast by law upon the head of that department, and that pending a writ of mandamus the three should die, resign, or be removed, would not the reasoning and principle decided in the Boutwell case be equally applicable to such action? The three commissioners in this case are three public officers elected by the people for a term fixed by law. As such officers, they are commanded by law to perform a certain duty. It is said they have

neglected to do this, and the mandamus is invoked to compel them. Is it any the less a personal action than if the writ was aimed against one officer, whose duty it was to levy the tax? The duty rests upon them as persons, although it may, as is alleged, "have arisen from the acceptance of an office which has imposed the duty" upon them; and what the law seeks to enforce by the writ of mandamus, is the *personal obligation* of the officer. This is as true of the present case as it was of the case in *United States* v. *Boutwell*, above cited.

The same principle was declared in *Downs* v. *Supervisors of Rock Island County*, 4 Bissell, 508, where the court decided that an alternative writ of mandamus must be served upon the individual members of the board, and that service on the clerk of the board, and service admitted by such clerk, "by order of the board," was not a good service. And also in *Badger* v. *United States*, 3 Otto, 599, where it was held that the mandamus was properly awarded, because the attempt of the defendants to resign was ineffectual; it being substantially conceded, in the opinion of the court, that if they had been out of office the mandamus proceedings could not be sustained.

In *United States* v. *Supervisors of Lee County*, 2 Bissell, 80, where a motion was made to attach the defendants for disobedience to the writ, the court say (page 80) that the persons so sought to be attached "were parties to this suit, and had been served with process."

(3.) This court, in *Badger* v. *The United States*, 3 Otto, 599, held that the officers mentioned in that case remained in office, notwithstanding their attempted resignation, because the statute provided that that class of officers should hold their office for a term fixed, and until their successors should be "appointed or chosen and qualified." The statutes of Kansas contain a similar provision in regard to all county officers: that they shall hold their office two years, "and until their successors are qualified." When the peremp-

tory writ was awarded in this case in the court below, the fixed term of office of these commissioners had nearly expired; and a general election had been held to elect a new set of commissioners, and two of the commissioners made defendants to the alternative writ, viz., Van Winkle and Lucas, had not been re-elected, but other persons had been duly elected such commissioners in their place, so that their term of office would expire before the day fixed in the peremptory writ for the levy of the tax. (Record, pp. 36, 37.) And, in fact, their successors did qualify at the proper time, in January following, more than six months before the time fixed in the peremptory writ for levying the tax, viz., the first Monday of August thereafter.

Now, it is clear, that a peremptory writ of mandamus cannot be issued subject to a contingency which may defeat its operation altogether. In such case, it would be a conditional and not a peremptory writ. The first Monday of August in each year, is the only time when, by law, the commissioners can levy a county tax for *any purpose;* after which, on successive days fixed by law, other officers are to perform duties respectively looking to the collection of the tax. There was no provision in the law under which these bonds were issued empowering the commissioners to levy a special tax for their payment at any other time, nor empowering the other officers of the county to perform their respective duties in that behalf to secure the collection of such tax, at other than the times fixed by law in regard to general taxation. So the peremptory writ in this case commands the levy of the tax on or before the first Monday of August in the then next year. When that time arrived, the peremptory writ, if it was valid, applied to two persons who had not been parties to the alternative writ; had never had an opportunity to levy the tax, and consequently had not refused. This is precisely what this court in the Boutwell case say cannot be done.

(4.) That the peremptory writ in this case was altogether

irregular and useless, appears from the fact that, even conceding that the court could by *mandamus* empower the commissioners to levy this tax on any other day than that fixed by law for the levy of general county taxes, still the county clerk and the county treasurer had duties to perform respectively, without which the tax, even if levied, could not be collected. Neither of these officers were parties either to the alternative or the peremptory writ, and consequently they could acquire no power from, nor be subjected to any duty by, the peremptory writ. When the tax is levied on the day fixed by law, it goes through the machinery provided by law as a part of the general county tax. But when not levied on that day, there is no provision of law for passing it through the other offices to secure its collection. The certificate of the county clerk attached to the perfected tax-roll made by him in pursuance of the levy, becomes the treasurer's warrant for collecting the tax. This certificate must be made at the time appointed by law. Made at any other time, it would be no protection to the treasurer for making a levy and sale of property to pay the tax. Therefore, even conceding that the writ could clothe the commissioners with power to levy the tax at any other time than that fixed by law, it could not give corresponding power to the other officers against whom the writ was not sent. But it is useless to pursue this point further, because this court have decided that the writ cannot *confer authority* upon any officer. (*United States* v. *County of Clark*, 5 Otto, 773.)

Mandamus cannot compel the levy of a tax at any other time, nor in any other manner than that designated by law. (*Supervisors* v. *Kiein*, 51 Miss., 807; *People* v. *Westford*, 53 Barb., (N. Y.,) 555.)

Where the relator does not controvert the return, but moves for peremptory writ, he admits the return to be true. (*Beard* v. *Supervisors*, 51 Miss., 542.)

(5.) It may be said that when the peremptory writ was

granted the successors of Van Winkle and Lucas had not qualified, because their terms had not begun; and, therefore, the court could not know that they would qualify, as the law required them to do. But a peremptory writ of mandamus cannot issue against a person commanding him to perform a certain act on a certain day, because he *may be* in office on that day, any more than it could issue against a private citizen, because he might be elected to the office, and qualify before the day fixed for the performance of the duty.

Again, it is the presumption that every person elected to an office will qualify as the law requires him to do. At least, there is no presumption that he will not. Therefore the court acted not upon a fact, nor the legal presumption of a fact, but upon the bare possibility that the new commissioners would not qualify, and the old ones would therefore remain in office.

II.

When this court has deliberately decided a legal proposition, it is almost as disrespectful to argue in support of it as against it. But inasmuch as the soundness of the principles laid down in the Boutwell case is supposed to be controverted by opposite counsel and the decision of the court below, we may be pardoned for citing some authorities in its support.

The proceeding by writ of *mandamus* is a civil action between the real parties thereto. Anciently, the writs of *mandamus* and *quo warranto* were considered as prerogative writs, to be issued only in the name and for the benefit of the Crown. But in modern practice, both are treated as civil actions between the parties in interest.

MANDAMUS.—*Kendall* v. *Stokes*, 3 How., 100.
Com. v. *Dennison*, 24 How., 98.
State v. *Com'rs*, 11 Kansas, 69.
State v. *Marston et al.*, 6 Kansas, 524.
Dove v. *School District*, 41 Iowa, 689.

QUO WARRANTO.—*Rex* v. *Francis*, 2 D. & E., 484.
Bank v. *State*, 1 Blackf., 272.
2 *Kid on Corp.*, 439.
Brison v. *Lingo*, 26 Mo., 496.
Ensminger v. *People*, 47 Ill., 384.
Com. v. *Browne*, 1 S. & R., 382.

III.

By the practice in the State courts of Kansas, mandamus proceedings must be in the name of the party interested, and not in the name of the State on relation, &c. And if commenced in the latter form the proceedings will be dismissed.

State v. *Com'rs*, 11 Kansas, 66.
State v. *Marston*, 6 Kansas, 524.

By the act of Congress of 1872, the practice in the State courts is adopted as the practice in the Federal courts in the State.

IV.

It was claimed in the court below, and may be here, that if this remedy be not sustained in the form adopted, this judgment cannot be collected; that the members of the board can resign from time to time, and so defeat its collection; that no other remedy exists.

(1.) In the first place, the mere fact that the party has no other remedy will not authorize proceedings by mandamus.

Ex parte Ostrander, 1 Denio, 679.
High's Extraordinary Remedies, sec. 19.
Ex-parte Newman, 14 Wall., 152.
Lewis v. *Barclay*, 35 Cal., 213.

(2.) The evil anticipated must be remedied by legisla-

tion; and cannot be by stretching and changing the scope and functions of the writ of *mandamus*, as at present regulated by law.

V.

It could not be assumed, when this writ was granted, that the persons who would compose the board on the first Monday of August then next, would not levy the tax. And for this reason the granting the writ was erroneous.

MATT H. CARPENTER,
TAYLOR & GILLPATRICK,
of Counsel for Plaintiffs in Error.

SUPREME COURT UNITED STATES.

THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH COUNTY,

Plaintiff in Error,

VS.

RALPH SELLEW,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

SUPREME COURT UNITED STATES.

THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH COUNTY,

Plaintiff in Error,

VS.

RALPH SELLEW,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

SUPREME COURT UNITED STATES.

THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH COUNTY,
Plaintiff in Error,

VS.

RALPH SELLEW,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

On the first day of July, A. D. 1865, the county of Leavenworth issued certain bonds, with interest coupons thereon, to the Missouri River Railroad Company, for stock of that company, by the county subscribed for, under the law of Kansas on that subject, as set forth on pages 41 and 42 of the Laws of Kansas of 1865, of which the following is a copy, to wit:

CHAPTER XII—BONDS TO RAILROAD COMPANIES.

AN ACT to authorize counties and cities to issue bonds to railroad companies.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That the board of county commissioners of any county, to, into, through, from, or near which, whether in this or any other state, any railroad is or may be located, may subscribe to the capital stock of any such railroad corporation, in the name and for the benefit of such county, not exceeding in amount the sum of three hundred thousand dollars in any one corporation, and may issue the bonds of such county, in such amounts as they may deem best, in payment of said stocks: *Provided*, That such bonds shall be issued only in payment of assessments made upon all the stocks of

such railroad company, which bonds shall bear interest at a rate not exceeding seven per cent. per annum, and shall be payable within thirty years. And the said board of commissioners shall elect one of their number, who shall not be a stockholder, to cast the vote of the county at any election for directors, or at any meeting of the stockholders of such company; and said board of commissioners shall annually levy and collect, at the same time and in the same manner that general taxes are levied and collected, a tax sufficient to pay the annual interest on such bonds, and to create a sinking fund for their redemption. But no such bonds shall be issued until the question shall first be submitted to a vote of the qualified electors of the county at some general election, or at some special election to be called by the board of county commissioners, by first giving twenty days' notice in some newspaper published and having general circulation in the county, or, in case there be no newspaper in the county, then by written or printed notices posted up in each election precinct; and, in submitting said question, said board of commissioners shall direct in what manner the ballots shall be cast. If a majority of the votes cast at such election shall be in favor of issuing such bonds, the board of commissioners of the county shall issue the same.

SEC. 2. Said bonds, when issued, shall be in such form, and shall be numbered and registered in such manner, as the board of commissioners shall determine.

SEC. 3. And the common council of any city in any such county as is described in the first section of this act, incorporated under the laws of this State, may, under the provisions of this act, subscribe for stocks in, and issue bonds to, any such railroad company, not exceeding the sum of two hundred and fifty thousand dollars in any one company; and all the provisions of the first two sections of this act, as to submitting the question to a vote of the people, subscribing for stocks, the manner in which the bonds shall be issued, and the selection of a person to vote for director or other purposes, shall, as far as practicable, apply to and govern the action of the common council; and the common council shall annually, at the same time and in the same manner that general city taxes are levied and collected, levy and collect a tax sufficient to pay the annual interest on such bonds, and to create a sinking fund for their redemption.

SEC. 4. In case the board of commissioners of any such county, or the common council of any such city, have heretofore submitted to the electors of such county or city the question of issuing bonds to any railroad company, and at such election such electors voted to issue such bonds, such board or such council, as the case may be, are hereby authorized to issue such bonds and subscribe for stocks not exceeding the amount as provided in the first and third sections of this act, as provided in the first section of this act.

SEC. 5. This act shall take effect and be in force from and after its publication once in the *Daily Conservative*.

Approved February 10, 1865. S. J. CRAWFORD, *Governor*.

I hereby certify the foregoing to be a true copy of the enrolled law on

file in my office, and that the same was published in the Leavenworth *Daily Conservative* for February 14, 1865. R. A. BARKER,
Secretary of State.

Ralph Sellew sued the county on some of these bonds and coupons (see pages 1 to 18 of the transcript), and on the 29th day of November, 1875, recovered judgment for $19,923.40. (Pages 24 and 25.) At the time the bonds were made, the following provision was made by law for the levy of taxes, to wit, (section 14, Laws 1863, page 102:)

SEC. 14. The county commissioners shall meet on the third Tuesday in August in each year, and shall estimate and determine the amount of money to be raised by tax for county purposes; also, all other taxes which they may be required by law to levy.

And in reference to judgments, a section was in force in the words following, to wit, (section 8, page 410, Compiled Laws 1862:)

SEC. 8. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him, in his name of office, where the same should be paid by the county, no execution shall issue upon said judgment, but the same shall be levied and collected by tax, as other county charges, and, when so collected, shall be paid by the county treasurer to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor: *Provided*, That execution may issue on said judgment, if payment be not made within sixty days after the time required for the payment of county taxes to the county treasurer, by the proper officers of said county, in each year.

The judgment not having been paid, and no tax levied therefor in 1876, Sellew, in 1877, demanded that a tax be levied therefor, which was not done; and Sellew, as shown on page 27, applied for a mandamus, which was granted (pp. 28 and 29), and an alternative writ issued (pp. 29 to 31), the service of which will be seen on pages 31 and 32. The answer, on pages 35 to 37, did not show a levy, as required. Plaintiff in error moved the court to quash the alternative writ, and Sellew to quash the return. The court overruled the first motion, and sustained the motion of defendant in error, and granted a peremptory writ requiring a

tax to be levied on the first Monday of August, 1878, to pay the judgment, as shown on pages 37 to 38, which order was so made as to time in pursuance of section 83, p. 80, Laws of 1876, in the words following, to wit:

SEC. 83. The county commissioners shall meet on the first Monday of August in each year, and shall estimate and determine the amount of money to be raised by tax for all county purposes, and all other taxes which they shall be required by law to levy.

And section 8, page 254, General Statutes 1868:

SEC. 8. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him, in his name of office, where the same should be paid by the county, no execution shall issue upon said judgment, but the same shall be levied and collected by tax, as other county charges, and when so collected, shall be paid by the county treasurer to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor.

As the above-copied laws, in force when the contracts sued on were made, were to a certain extent part thereof, of course the law on page 193 of the Laws of 1876, limiting the amount of taxes to be levied to pay judgments, was void as to the said contracts made when the amount to be levied was not so limited.

The writ in this case was properly ordered to be directed to the Board of County Commissioners. (Whether its direction was to be governed by the statute of Kansas prescribing the manner of such proceeding, or by the common law, see 3 Stephens's *Nisi Prius*, pp. 2322 and 2323, and last case referred to, on p. 2329 of same. See, also, Moses on Mandamus, ch. 20, and *Knox vs. Aspinwall*, 24 Howard, and Tapping on Mandamus, [341], 384, etc.)

The decision of the court in 17 Wallace, relied on with so much assurance by the plaintiff in error, was in an entirely different case. There, there was no board or body of persons to whom the writ could run. By the constitution of Kansas, as amended in 1866, county commissioners are to be

elected one each two years, so that it is a continuous body, and we submit a writ should run against them as such, that is, against them by that name.

Section 688 of the code of Kansas of 1868, as amended in 1870, is found on page 180 of the Kansas laws of 1870, and is in the words following:

"The writ of mandamus may be issued by the supreme court or the district court, or any justice or judge thereof, during term or at chambers, to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty resulting from an office, trust or station; but though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion."

We claim it was proper to allow the writ to run against the Board of County Commissioners — that is, the body upon whom devolved the performance of the duties Sellew has a contract right to the performance of. (See, also, section 914, U. S. Revised Statutes.)

The county claims among other things, that the writ could only be allowed against the individuals composing that body; *and right there is*, as we understand it, the most important question in this whole matter. Indeed, we think we may safely say, that on a decision of that question depends the question whether debts against municipalities can be collected at all, or not. If writs of mandamus can only issue against individuals, as individuals, by their individual names, to compel the performance of such duties, and if such proceedings will not be good against a successor, then the individuals can resign their offices and get others to accept their places more often than courts can act; and courts and laws, in such cases, become but a laughing-stock to the repudiating makers and contractors of such debts, if the law on this subject be as claimed by the county.

Here we have a law making it the duty of a certain body composed of individuals to levy certain taxes. They do not

levy them. The court has allowed a writ against that body in their collective capacity — that is, the Board of County Commissioners — a body composed of divers individuals. Now if that is proper, and it compels just what the contract calls for, that is, the levy of a tax by the tax-levying power, resignations and successions cannot avail. The new incumbent, when he takes his place, will take it subject to the performance of the duties imposed on the office. In this connection, see 91 U. S., 298, which shows only nominal damages could be recovered for failure to perform such duties.

Permit us to ask your honors if the contract rights of Sellew will not be whittled away to nothing, in fact, to derision, if the writ must run against the individuals by name? We ask for the substance of said law of 1865, and that the writ be permitted to run against the county board *as such* — to be operative against the individual incumbents of those offices at the time when they should perform the duties; failing in which, further proper proceedings may be had against the then incumbents. The law unquestionably is, that a suit commenced against a municipality by service of process on an officer as required by law, is good as a proceeding against all subsequent incumbents. It is not necessary to have a new writ, or commence a new suit, every time there is a change in the official on whom process is to be served; and we submit, there is not, on principle, any difference with reference to the writ of mandamus as to such matters as this now before the court.

We refer also to the authorities and argument of defendant in error in the case of The City of Leavenworth vs. J. N. Kinney, in this court, which we understand is to be submitted with this case.

We submit that the writ ordered in this case is in con-

formity to the practice in mandamus cases in cases against corporations, whether private or municipal, in this country and England, and to the statute laws of Kansas, and that it should be sustained.

E. STILLINGS,
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